

STATE OF MICHIGAN
COURT OF APPEALS

TUBBY'S, INC.,

Plaintiff-Appellant,

v

WALTER LASKO,

Defendant-Appellee.

UNPUBLISHED

September 27, 2002

No. 229542

Macomb Circuit Court

LC No. 98-003499-CK

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment in favor of defendant, following a bench trial, in this action for specific performance of an option to purchase clause in a real estate lease. We affirm.

Defendant leased property to plaintiff pursuant to a five-year lease, beginning on July 1, 1993, and ending on June 30, 1998. Paragraph 23 of the lease provided that, "in the event of the Tenant herein holding over after the termination of this lease, thereafter the tenancy shall be from month to month in the absence of a written agreement to the contrary." An addendum to the lease gave plaintiff an option to purchase the property and specified that the option to purchase was to be exercised as follows:

1. Tenant must notify landlord by certified mail of his intent to exercise the purchase option not later than 180 days prior to the expiration of the tenant's final lease year. Should tenant fail to provide the necessary notice, then tenant shall be deemed to have waived it's [sic] right with respect to this purchase option, all rights of tenant to be deemed null and void.

Plaintiff alleges that it verbally notified defendant of its intent to exercise the option to purchase in November 1997. Plaintiff subsequently sent defendant a letter, dated January 5, 1998, informing defendant that it was exercising the option to purchase. The parties dispute whether defendant agreed to proceed with the sale. Ultimately, defendant notified plaintiff that the option to purchase was never timely exercised and refused to sell the property to plaintiff. Following a bench trial, the trial court entered judgment in favor of defendant.

When reviewing equitable actions, this Court reviews the trial court's decision de novo, and reviews for clear error the findings of fact in support of the equitable decision rendered.

LaFond v Rumler, 226 Mich App 447, 450; 574 NW2d 40 (1997). “A trial court’s findings are considered clearly erroneous where this Court is left with a definite and firm conviction that a mistake has been made.” *Id.*

Plaintiff first argues that it provided timely notice of its intent to exercise the option to purchase. We disagree. According to the terms of the option provision, plaintiff was required to notify defendant of its intent to exercise the option by certified mail “not later than 180 days prior to the expiration of the tenant’s final lease year.” The original lease began on July 1, 1993, and was for a five-year term. Therefore, the “final lease year” began on July 1, 1997, and ended on June 30, 1998. Thus, in order to properly exercise the option to purchase, plaintiff was required to notify defendant in writing no later than 180 days before June 30, 1998. As such, plaintiff’s letter dated January 5, 1998, was untimely.

We reject plaintiff’s claim that the final lease year ended on July 31, 1998. While the lease term may have been extended on a month-to-month basis by virtue of paragraph 23, there is nothing in the language of either paragraph 23, or the option to purchase clause, suggesting that the period for exercising the option to purchase was likewise extended. On the contrary, the language in the option to purchase provision indicates that the option period is to be measured from the expiration of the “final lease year.” Therefore, this case is distinguishable from *Starr v Holck*, 318 Mich 452; 28 NW2d 289 (1947).

Plaintiff also argues that the option to purchase clause is ambiguous and, therefore, should be construed against defendant. We are not persuaded that the language is ambiguous. Even if the language were ambiguous, however, the proper remedy would be to submit the issue to the trier of fact to be determined in accordance with the parties’ intent. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 492; 579 NW2d 411 (1998). This is what occurred here and the trial court, sitting as the trier of fact, found that the parties intended that the option to purchase was to be exercised not later than 180 days before the original five-year lease term expired, i.e., June 30, 1998. This finding is supported by the evidence and, therefore, is not clearly erroneous.

Thus, because plaintiff failed to exercise the option to purchase within the time period allowed in the lease, the option expired and plaintiff no longer had the right to purchase the property.

Plaintiff also argues that it established a valid claim for equitable estoppel. The trial court properly rejected this claim. “Equitable estoppel is not an independent cause of action, but instead a doctrine that may assist a party by precluding the opposing party from asserting or denying the existence of a particular fact.” *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 140-141; 602 NW2d 390 (1999). “Equitable estoppel may arise where (1) a party, by representation, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts.” *Id.* at 141.

Plaintiff argues that the trial court should have found that defendant was equitably estopped from claiming that the option to purchase was not timely exercised. The trial court concluded that the evidence failed to establish a claim for equitable estoppel because it found that defendant did not engage in a course of conduct that led plaintiff to believe that it was not

required to strictly comply with the notice requirement. Conflicting testimony regarding this issue was presented at trial. The trial court indicated that it found defendant's testimony to be most credible and accepted his version of the events. Under these circumstances, we will defer to the trial court's superior opportunity and ability to judge the witnesses' credibility. *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998). Accepting defendant's version of the events, the trial court properly concluded that there was no basis for a finding of equitable estoppel.

Finally, plaintiff argues that the trial court's analysis was faulty in that it was unduly rigid given the equitable nature of this case. Plaintiff cites authority establishing that whether to grant equitable relief rests in the sound discretion of the court, to be exercised according to the particular circumstances of the case, *Youngs v West*, 317 Mich 538, 545; 27 NW2d 88 (1947), and argues that the circumstances here presented a compelling case for specific performance. As discussed previously, however, specific performance was not warranted because plaintiff failed to timely and properly exercise its option to purchase, and there is no basis for applying the doctrine of equitable estoppel.

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Jane E. Markey